

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Michael H. Kalkstein (State Bar No. 41417)
2 michael.kalkstein@dechert.com
3 Valerie M. Wagner (State Bar No. 173146)
4 valerie.wagner@dechert.com
5 Philip Barilovits (State Bar No. 199944)
6 philip.barilovits@dechert.com
7 **DECHERT LLP**
8 1117 California Avenue
9 Palo Alto, CA 94304-1106
10 Telephone: (650) 813-4800
11 Facsimile: (650) 813-4848

12 Attorneys for Defendant
13 **QUELLOS GROUP LLC**

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 **WILLIAM M. HAWKINS III,**

18 Plaintiff,

19 v.

20 **KPMG LLP, HARVEY ARMSTRONG,**
21 **QUELLOS GROUP LLC, and DOES 1**
22 **through 20, inclusive,**

23 Defendants.

Case No. C 05-04763 MHP

**CONFIDENTIALITY AGREEMENT AND
STIPULATED PROTECTIVE ORDER**

24 IT IS HEREBY ORDERED THAT, Plaintiff WILLIAM M. HAWKINS III and
25 Defendant QUELLOS GROUP, LLC, are to be bound by the following Confidentiality
26 Agreement and Stipulated Protective Order for the protection of confidential information,
27 documents, and other things produced, served or otherwise provided in this action by the parties
28 or by third parties:

1. After carefully reviewing material to segregate non-confidential from confidential
information, a person may designate all or portions of any information, materials or documents
produced or furnished by that person pursuant to discovery or otherwise during the course of this
litigation as "Confidential Information." Such a designation shall constitute a representation by
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1 the person and its counsel that they, in good faith, believe that the material so designated contains
2 or constitutes at the time of the designation: trade secrets or other information of a non-public
3 nature considered by the producing party or person to be commercially or personally sensitive,
4 confidential and/or proprietary; or other competitively sensitive or proprietary research, analysis,
5 development, marketing, financial or commercial information, including information likely to be
6 deemed sensitive by a non-party. Any such designations are to be reasonably limited both in
7 subject matter and in time.

8 2. Any document or transcript or portion thereof, whether an original or copy,
9 including any exhibits, answers to interrogatories and other written discovery responses, as well
10 as physical objects, recordings or things that any party deems to contain Confidential Information
11 shall be labeled by such party on each page of such document or on such physical object with the
12 designation "Confidential." In lieu of marking this notation on the originals of documents, the
13 party may mark the copies that are produced. All Confidential Information not reduced to
14 documentary, tangible or physical form, or which cannot be conveniently labeled, shall be so
15 designated by informing the recipients in writing that the information constitutes Confidential
16 Information.

17 3. Confidential Information shall not be publicly disclosed unless in accordance with
18 the terms of this Confidentiality Agreement. Confidential Information may be used only in
19 connection with the prosecution of or defense of or attempt to settle the above-captioned action
20 and not for any other pending or threatened litigation, or any other business or other purpose
21 whatsoever. Except as described herein or by order of this Court, all Confidential Information
22 shall be kept by the other parties in this case in a confidential manner, and shall not be given,
23 shown, disclosed, disseminated or described, directly or indirectly, to any person(s) other than
24 those set forth in paragraph 4 hereof.

25 4. The following persons (hereinafter called "Qualified Persons") shall be the only
26 persons who will be permitted to have access to Confidential Information:

27 (a) Each lawyer for a party in this case, including outside and in-house lawyers and
28 other lawyers regularly employed in their offices, and such lawyers' staff to whom it is

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1 necessary that materials be disclosed for purposes of this litigation, including secretaries,
 2 paralegals and document clerks. In addition, any other counsel representing any of the
 3 Defendants or any current or former personnel of the Defendants may also have access to
 4 Confidential Information.

5 (b) Each party, and any current or former partner, director, officer, employee or agent
 6 of a party who is requested by that party or any of its attorneys to work on this action;

7 (c) Independent experts or consultants retained by counsel for the purpose of assisting
 8 in this litigation, including their staff to whom it is necessary that materials be disclosed
 9 for purposes of this litigation, but only to the extent necessary for such expert or
 10 consultant to perform his assigned tasks in connection with this litigation;

11 (d) Any non-party witness in this litigation, and his or her counsel, may be provided
 12 with a copy of any document(s) designated as "Confidential" for their review in
 13 preparation for or during their deposition or in preparation for their testimony at trial or a
 14 hearing in this litigation (upon completion of the review, the document(s) shall be
 15 returned to counsel for the supplying party);

16 (e) Mediators, arbitrators, or similar outside parties and their staffs enlisted by all
 17 parties to assist in the resolution of this matter;

18 (f) Outside commercial copying, imaging and/or database services; and

19 5. All persons receiving any Confidential Information under paragraphs 4(c), (d), and
 20 (e) shall sign an Acknowledgment that reflects their commitment to preserve the confidentiality
 21 of all information so designated, which Acknowledgment shall be on the form annexed hereto.
 22 Counsel for each party shall maintain copies of all Acknowledgments executed by those who
 23 have access to Confidential Information pursuant to paragraphs 4(c), (d), or (e), as well as a list of
 24 all persons in their employ or control who are entitled to have access to Confidential Information.

25 6. A party may designate some or all of the transcript of a deposition as Confidential
 26 by indicating on the record at the deposition that the testimony contains or reflects Confidential
 27 Information or by notifying all parties in writing, within 30 days of receipt of the transcript. of
 28 the specific pages and lines of the transcript which are confidential. Each party shall attach a

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1 copy of such written statement to the back of the transcript and each copy thereof in his
2 possession, custody or control. Each deposition shall be treated as Confidential Information for a
3 period of 30 days after a full and complete transcription of such deposition is available.

4 7. Court Procedures.

5 (a) Subject to the provisions of this section, Confidential Information may be
6 disclosed to the Court, Court officials or employees involved in this action (including court
7 reporters, persons operating video recording equipment at depositions, and any special master or
8 referee appointed by the Court) and the jury in this action, and any interpreters interpreting on
9 behalf of any party or deponent.

10 (b) The parties agree that the employees of the Court or the Clerk's office have no
11 duty to the parties to maintain the confidentiality of any information in any papers filed with the
12 Court.

13 (c) The parties may attach Confidential Information to a court filing or otherwise
14 include Confidential Information in a court filing only in accordance with Local Rule 79-5.

15 (d) The party lodging or filing the Designated Materials shall be responsible for
16 retrieving such Designated Materials from the Court following the final termination of the
17 action (including after any appeals).

18 (e) If any party fails to file Confidential Information under seal, any party to this
19 action may request that the Court place the Confidential Information under seal within twenty
20 (20) days of the filing of said Confidential Information. The Clerk of the Court is directed to
21 comply with such request if consistent with Local Rule 79-5.

22 (f) The parties shall not present or quote from any Confidential Information in open
23 court, unless the Court shall order otherwise. Presentation of, or quotations from, Confidential
24 Information shall be heard by the Court under such conditions and safeguards as the Court may
25 impose to prevent improper disclosure of Confidential Information. The parties shall meet and
26 confer concerning appropriate methods for dealing with Confidential Information at trial.

27 8. In the event that a party inadvertently fails to stamp or otherwise designate a
28 document or other information as Confidential Information at the time of its production, that party
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1 may thereafter within 30 days of the production, stamp or otherwise designate the document or
2 other information, as Confidential Information. The party receiving such subsequent designation
3 shall immediately give notice thereof to each person, if any, to whom the previously undesignated
4 document or other information was in the interim disclosed, shall diligently attempt to retrieve all
5 copies of the documents or information distributed to persons other than Qualified Persons, and
6 thereafter such document or information shall be subject to the provisions of this Confidentiality
7 Agreement.

8 9. The inadvertent or unintentional disclosure by the supplying party of Confidential
9 Information (regardless of whether the information was so designated at the time of disclosure),
10 or information protected from disclosure by the attorney-client privilege or the attorney work-
11 product doctrine, shall not be deemed a waiver in whole or in part of a party's claim of
12 confidentiality, attorney-client or work-product privileges, either as to the specific information
13 disclosed or as to any other information relating thereto or on the same or related subject matter,
14 provided that the supplying party gives notification to the other parties within [MISSING
15 SOMETHING] when it learns of such inadvertent or unintentional disclosure. Upon receiving
16 such notification, all parties that have received copies of the inadvertently produced document
17 shall either (1) promptly return it to the supplying party and destroy any other copies thereof; or
18 (2) challenge the withholding of the document. If the withholding of the document is challenged,
19 there shall be no further dissemination of the document during the pendency of the challenge. In
20 the event that only part of a document is claimed to be privileged, the supplying party shall return
21 redacted copies of such document, removing only the part(s) thereof claimed to be privileged, to
22 all parties within 10 days.

23 10. Within sixty (60) days after the final conclusion of the Litigation, including all
24 appeals, the receiving party shall destroy all originals and copies of each document or object that
25 another party has designated as Confidential Information (including both paper and electronic
26 versions), and shall provide the designating party with an affidavit of destruction. In the
27 alternative, the receiving party may return all originals and copies of each document or object that
28 another party has designated as Confidential Information to the designating party, shall destroy all

1 electronic copies of such materials, and shall provide the designating party with an affidavit
2 confirming that all Confidential Information (including both paper and electronic versions) has
3 been returned and/or destroyed.

4 11. Any court reporter, transcriber or videographer who reports, transcribes or records
5 testimony in this action at a deposition shall agree by a statement on the record, before recording
6 or transcribing any testimony by a witness, that all testimony and information revealed at the
7 deposition is and shall remain confidential and shall not be disclosed by such reporter, transcriber
8 or videographer except to the attorneys for each party and any other person who is present while
9 such testimony is being given, and that all copies of any transcript, reporter's notes videotape or
10 any other transcription records of any such testimony shall be retained in absolute confidentiality
11 and safekeeping by such reporter, transcriber or videographer or shall be delivered to the
12 undersigned attorneys.

13 12. A party shall not be obligated to challenge the propriety of a Confidential
14 Information designation at the time made, and a failure to do so shall not preclude a subsequent
15 challenge thereto. In the event that any party to this litigation disagrees at any stage of these
16 proceedings with the designation of Confidential Information, the parties shall try first to resolve
17 such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party
18 designating the information as Confidential shall have the burden of applying to the Court for an
19 order deeming the information to be "Confidential Information." The party opposing the
20 "Confidential Information" designation shall not object to the designating party filing the
21 information at issue with the Court under seal in order for the Court to resolve the matter. Any
22 information designated as Confidential Information shall be subject to the terms of this Order
23 during the resolution of any dispute pursuant to this paragraph.

24 13. Nothing shall prevent disclosures beyond the terms of this Protective Order by the
25 party that designated the information as Confidential Information or if the party that designated
26 the information as Confidential Information consents to such disclosure, or if the Court, after
27 notice to all affected parties, orders such disclosure.

1 14. This Protective Order shall not be construed to prevent any person, including a
2 Qualified Person, from making use of designated Confidential Information which (a) was
3 lawfully in his or her possession prior to receipt from the supplying party and not otherwise
4 subject to any obligation of confidentiality, (b) appears in any published material available to the
5 general public, without fault of the disclosing [SHOULD THIS BE THE RECEIVING PARTY?]
6 party, (c) was or is hereafter obtained from a source or sources not under an obligation of
7 confidentiality to the other party or parties, without fault of the disclosing party, or (d) is
8 exempted from the operation of this Protective Order by written consent of the party producing
9 such Confidential Information.

10 15. If any person possessing Confidential Information is subpoenaed by a court of
11 competent jurisdiction in another action or proceeding or served with a legally enforceable
12 document demand, and such subpoena or document demand seeks Confidential Information, the
13 person receiving the subpoena or document demand (1) shall give written notice by fax within
14 three business days of the receipt of such subpoena or demand to undersigned counsel for the
15 party or parties that produced and/or designated the Confidential Information and (2) shall, to the
16 extent permitted by law, withhold production of the subpoenaed material until any dispute
17 relating to the production of such material is resolved, provided, however, that nothing in this
18 agreement shall prevent any party to this agreement from disclosing any such documents pursuant
19 to an administrative order, demand, summons, subpoena or other request from any federal or state
20 agency or grand jury, and the notification and withholding procedures set forth above shall not
21 apply in the case of any such request.

22 16. This Protective Order shall be effective immediately upon signature by counsel for
23 all parties, and all parties agree that the Court may enforce the terms of this Protective Order, and
24 that the terms shall survive the termination of this action.

25 17. This Stipulation may be executed by each part separately.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: December 22, 2005 BERGESON LLP

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4 By: Hway-fing Hsu
5 Attorneys for Plaintiff
6 WILLIAM M. HAWKINS III

7 Dated: 12/22/05 DECHERT LLP

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9 By: Valerie M. Wagner
10 Attorneys for Defendant
11 QUELOS GROUP, LLC

12 ORDER

13 PURSUANT TO STIPULATION, IT IS SO ORDERED. *subject to attached*

14 *Supplemental Order*
15 DATED: 1/3, 2006

16 *[Signature]*
17 Hon. Marilyn Hall Patel
18 United States District Court Judge
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ACKNOWLEDGMENT

The undersigned has been provided with a copy of the foregoing Protective Order entered in the case captioned *Hawkins v. KPMG LLP, et al.*, No. C 05-04763 MHP, has had an opportunity to review the Protective Order, and is fully familiar with all of the terms of the Protective Order. By executing this Acknowledgment, the undersigned agrees to be bound by the terms of the Protective Order.

Print name: _____

Address: _____

Date signed: _____